

MEDICAL OPINION

IN THE

PARISH WILL CASE.

BY

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FORMERLY

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INSANE IN PRUSSIA, AUSTRIA, AND GERMANY;" AND "AN EXAMINATION OF
THE PRACTICE OF BLOOD-LETTING IN MENTAL DISORDERS."

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OPINION OF PLINY EARLE, M. D.

The last will and testament of the late Henry Parish, deceased, being before the Surrogate of the City and County of New York for probate, the validity of the three codicils thereto appended is contested, upon the ground (among others) of alleged incompetency, from mental unsoundness of the testator at the times at which the said codicils were severally made.

The testimony in the case has been placed in my hands, with the request for an opinion, deduced therefrom, touching the mental condition of the testator.

A few preliminary remarks are necessary for an exposition of the principles upon which my investigation has been governed.

Among men in their natural condition, there is an infinite gradation or diversity of mental powers, or the germs of what become such diversity of powers, between the limits of two widely separated extremes. Those extremes are, on the one hand, cretinism and the most abject idiocy, and, upon the other, that intellectual ability which readily comprehends the nature and the phenomena of the concrete, and explores the subtleties of the abstract; which almost intuitively grasps the finite, and then reaches forward toward the infinite; such ability as has been manifested by the discoverers, originators, expounders, and administrators, in physics and in metaphysics, in legislation, jurisprudence, and abstract science.

In this scale of infinite gradation, there is no natural boundary between the sound minds and the minds unsound; and hitherto no artificial boundary has been established.

Deficiencies, obliquities, aberrations, whimsicalities, caprices, and frivolities, more properly belonging to the persons in the inferior portion of the scale, are, one or more of them, so frequently associated with the more ennobling characteristics of intellect and emotion among men in the superior portion, that it appears impossible to fix upon such a boundary.

The mind naturally sound, or belonging to the superior portion of the scale, may, by disease, become impaired or unsound, manifesting perversions, illusions, and delusions, and any or all of the characteristics of the minds at the lower extremity of the scale—the idiots and the cretins.

Among the persons thus affected there is every gradation, every possible form, phase, genus, species, and variety of insanity, from the one extreme of slight impairment, eccentricity, aberration, perversion, or delusion, to the other, of acquired idiocy as degraded, debased and bestial as the utmost depth of congenital idiocy.

So diverse and delicately graded are the characteristics or phenomena of both sanity and acquired insanity, and so heterogeneously are they commingled, that no line of demarcation, either natural, scientific, or conventional, has been drawn between mental soundness and acquired mental unsoundness.

Often, especially in the manifestations of those mental operations which are remote from the borderland between sanity and insanity, that which in one man is generally recognized and received as sanity is, in another man, received for unequivocal insanity. The sanity of the natural buffoon would be insanity in a Bacon or a Newton.

Neither the loss, the impairment, nor the perversion of the perceptive faculties is necessary to constitute insanity; for a large number of the insane still retain the normal use of those faculties. Nor is loss or impairment of memory a requisite element of mental unsoundness. Some of the most obviously and broadly marked insane persons I have ever known, had the most retentive of memories. The loss or impairment of the reasoning faculty is not an absolute condition of insanity. Some mental aliens are exceedingly acute reasoners, their arguments conforming to logical rules. Nor is it true, as has been intimated by a writer upon the subject, that the perversion of intellect consists always in their arguing from false premises. There are many exceptions to this. Some, less logical, exhibit that style of reasoning by which a child not unfrequently confounds and stultifies his wiser parent. Judgment, in the broad signification of the word, is not necessarily destroyed in insanity. A sound, prudent and wise judgment upon the ordinary every day affairs of life, in the sphere in which he moves, is sometimes manifested by a person of very seriously impaired or perverted mind.

The insurmountable difficulties thus set forth being in the way, no accurate definition of insanity has ever been devised. It necessarily follows that there is no test for it, no *experimentum crucis* which, in equivocal cases, may be applied with certainty of a positively accurate result, or demonstration, such as in the results of the exact sciences divests of all doubt the solution of a problem or a proposition.

Insanity, in the extreme grades of all its species and varieties, is sufficiently obvious to every one upon but slight investigation. But it follows from what has been written that, where it is not so apparent, it cannot be proved that one man is necessarily insane, or

necessarily sane, because another man, who manifested some of the same or similar peculiarities, was so.

As a consequence of the foregoing considerations, every case of alleged unsoundness of mind must be tried, primarily and chiefly, by itself. Where it may be done, as in this case, the condition, conduct, and mental manifestations of the person at the time of the alleged unsoundness, must be compared or contrasted with his condition, conduct, and mental manifestations antecedent to that time, or at a period at which it is acknowledged that his mind was sound.

The relationship between the present condition and the past condition of the person, as deduced from data derived from all the channels of mental development or manifestation, is the test of sanity or insanity which nearest approximates to certainty. But there are antecedent, attending, or collateral facts or circumstances which also render assistance in elucidating the subject, and in determining the ultimate decision.

Henry Parish, the testator, was a retired merchant residing in the city of New York. It appears in evidence that when in health he was "a sound thinker," his "mind good;" that he was "of sound judgment, slow to decide," "even-tempered," "placid and unexcitable;" that he manifested "great self-respect, and strict observancy of decorum, great courtesy and affability;" and that he was "very fond of his friends and of social intercourse with them."

He kept an office in that district of the city which is most occupied by men engaged in the largest mercantile and financial transactions. He was "in the habit of keeping a supervision over and daily examining his books and accounts," (*Folsom*, I. f. 1100,) generally being in his office from 9 o'clock A. M. until 3 o'clock P. M., "but frequently until 5 or 6 o'clock P. M." Most of his evenings were passed at

his club, where he generally remained until a late hour. On the 19th of July, 1849, he was attacked with apoplexy, immediately followed by hemiplegia and loss of speech. Other particulars in relation to him, which are of value in this inquiry, will be mentioned hereafter.

In prosecuting the investigation of the condition of Mr. Parish at the time of his alleged mental unsoundness, in conformity with the principles or plan above-mentioned, I shall pursue the following course:

A. Relationship of the testator's condition subsequently to the attack of the 19th of July, 1849, to his condition antecedently to that attack.

1. Disposition; feelings and emotions.
2. Intellectual manifestations.
3. Habits and customs.
4. Will; force of character.

B. Antecedent, attendant, and collateral facts and circumstances.

1. Hereditary predisposition.
2. Disease symptomatic of cerebral lesion.
3. The nature of the acts the validity of which is contested; that is, the tenor and spirit of the testamentary codicils.
4. Acts or acquired peculiarities in which the testator resembled the insane.
5. Treatment of the testator by his family.
6. Language of other persons in reference to the testator, in the course of his illness.
7. Opinions of witnesses in regard to the testator's mental condition.

A. RELATIONSHIP OF THE TESTATOR'S CONDITION SUBSEQUENTLY TO THE ATTACK OF THE 19TH OF JULY, 1849, TO HIS CONDITION ANTECEDENTLY TO THAT ATTACK.

1. *Disposition ; feelings and emotions.*

According to the testimony of Messrs. Wiley, Folsom, Kernochan, and others, the testator, prior to the attack, was remarkably calm, equable in temper, unexcitable—a complete master of his feelings and emotions. After the attack, as shown by these and other witnesses, he shed tears upon very slight occasions, was highly irritable, irascible, and subject to sudden paroxysms of anger. Mr. Folsom saw him shed tears “three or four times in front of the office”—“sometimes thought it was pain, weakness of mind, or hysterical ;” and many witnesses testify to similar evidence of inability to control his feelings and emotions.

His increased irritability was exhibited not in private alone, as towards the several members of his household, but in public also, as at the Market of Case & Vandewater, Washington Market, and in Broadway, in front of Mr. Root's. That his irritation sometimes amounted to an explosive outburst of anger, is evident from the testimony. In presence of Mr. Wiley he insisted upon having a check drawn after his wife had told him there were not sufficient funds on deposit to meet it ; and, as the witness avers, “appeared to get furiously mad.” (II. f. 38.) When urged not to go to Greenwood, because, as he was told, Mrs. Parish was not sufficiently well to accompany him, “he manifested towards me,” says Major R. Delafield, “great irritation, accompanied by gesticulation to me so unpleasant that I determined never to thwart his wishes again.” (II. f. 1768.) Mr. Case testifies that upon

one occasion, when the carriage of the testator was about to leave the market, Mr. Parish rose from his seat and attempted to "catch hold" of Mrs. Parish's bonnet. (I. f. 1894.) Mr. Austin says, in allusion to the times at which he was showing poultry to Mr. Parish, as he was seated in his carriage, Mr. Parish "would be very mad at me," and at one time "took his cane and flurried it around and scared me." (I. f. 1910.) In front of Mr. Root's, Mr. Parish "got into a violent passion, and the coachman was afraid he would break the windows; and so," adds the witness, "was I." (Wingrove I. f. 1523.) It is testified that at several times Mr. Parish pushed Mrs. Parish; and the testimony tends to show that at two or three times he struck her.

Such changes in the sphere of emotion as are here exhibited, may not, of themselves, and standing alone, be proof of impaired or disordered intellect, but they greatly augment the probabilities of such impairment or disorder. They are frequently among the first symptoms or signs of insanity, and often accompany it throughout its course. It is difficult to believe that a man constituted as was the testator, and occupying his social position, could be impelled, by the force of his feelings or emotions, to make so humiliating a public exhibition of himself as did Mr. Parish in some of the cases above mentioned, unless his mind were very considerably impaired in the sphere of intellect, as well as in that of emotion.

2. *Intellectual Manifestations.*

The operations of the intellect find expression mainly through the media of speech, writing, and pantomimic gesticulation, with facial expression. It be-

comes necessary to examine the condition of the testator in these several respects.

1st. *Speech*.—The only words alleged to have been uttered by him, in the course of his illness of more than six and a half years, are “yes,” “no,” and other sounds apparently intended for these words; “oh!” “ah!” “oh, dear,” “oh, Got,” “Why, yes,” and, once only, a word or sound which, by Mr. Bryson and Mr. Dunning, who heard it, was interpreted “her.” The “yes” and the “no,” if ever perfectly enunciated—and Dr. Markoe (II. f. 2076) testifies that “yes” was distinctly uttered for many of the first weeks of the testator’s illness—were so during comparatively a very short period. The “oh, dear,” appears not to have been a frequent exclamation, and was enunciated “oh, thear:” while the “oh, Got,” and the “why, yes,” were heard but a few times.

Besides these, a sound spelled “nin, nin,” by some of the witnesses, was very frequently uttered.

Of all these expressed sounds, articulate and inarticulate, those which are of the most importance in the communication of mental processes are “yes” and “no.” These have a wide range of utility. What dependence, then, is to be placed upon them as employed by the testator? Mr. Kernochan says, “The sound was always very much alike; (I. f. 847;) Mr. Wiley, that he never heard him make any sound which, by itself, would be taken for “yes” or “no;” (II. f. 92, 93;) and Dr. Markoe, that his negative was at first “nan, nan,” and became “more approaching niah, niah;” and that he sometimes used the same sound, “niah, niah,” for “yes.” (II. f. 2077, ’8.)

The sound “nin, nin,” was generally interpreted, by the witnesses, as a call for the attention of some person present at the time it was uttered; or as indicative of a desire to express some idea or thought, and

a wish for the person addressed to ask questions or make propositions, to which he might assent or dissent. If such were the intention, the sound was often used superfluously. Some of the witnesses intimate that it was uttered at every pause, however slight, in the conversation—if “conversation” it may properly be called; and Mr. Tileston says that he used it “almost constantly.” (II. f. 522.) This sound was confounded with the sounds supposed to have been expressive of affirmation and negation. Mr. Wiley says that the sounds were “always about the same.” (II. f. 91.) Dr. Taylor gives the signification of both interrogation and affirmation to “yah,” but says the intonation varied with the difference of meaning. (I. f. 3383.) Ed. Clark, (II. f. 2155, 2156, 2158,) in a space of little more than one page of the printed evidence, attributes *three* significations,—interrogation, affirmation, and negation,—to “neay.” This equivocal meaning of the sounds, and their confusion one with another, is fully testified to by Dr. Markoe, who says not only, as has already been mentioned, that Mr. Parish’s negative “niah, niah,” was sometimes used for “yes;” but also that he used ‘nin, nin,’ and ‘niah, niah,’ “somewhat interchangeably.” (II. f. 2079.) Hence, it is evident that “nin, nin” was employed to express what was received as interrogation, affirmation, and negation.

From all this it necessarily follows that no confidence could be placed in these sounds, as definitely expressive of any mental process. Such, it appears, was the opinion of George S. Simmons, who, after having been the attendant of Mr. Parish ten months, says that he understood nothing from his sounds, (I. f. 1715;) and nearly the same is implied by the language of Dr. Delafield, his family physician, who intimates that he judged of his meaning as much by his countenance as anything.” (II. f. 3153.)

2d. *Writing*.—It appears in evidence that the testator wrote, with a pencil, and upon the fly-leaf of a book, a series of characters, (*Exhibit No. 264, III., p. 701,*) which, as a whole, were “interpreted ‘wills.’” Dr. Markoe says that when he attempted to persuade the testator to write, he wrote with a pencil upon a slate “nearly the full words ‘Henry Parish,’ several times—he never wrote the full word ‘Parish’ *** he wrote sufficient of it to make it intelligible.” Several signatures of “H. Parish,” and “Hy. Parish,” are also in evidence, introduced as his autographs. One witness, Fisher, “thinks” that Mr. Parish once wrote the word “horse;” but this witness’s testimony upon various other points is positively contradicted by other witnesses.

The words and characters here designated, are the extent to which it is alleged that the testator wrote, in the long period of his disability. The characters first mentioned, *i. e.* those which were interpreted as *wills*, are rudely and irregularly made, the lines being of nearly uniform size, and the whole series so large that a rectangle enclosing seven and a half square inches of surface would scarcely enclose them. The strongest evidence that the signatures professedly the autographs of the testator, were written by him, is the fact that they are subscribed to attested business documents. The witness to them died prior to the death of the testator, and therefore we have no explanation from him. Two witnesses, Mr. Bleecker and Mr. Parsons, think that the hand, when some if not all of them were written, was held and guided by the hand of some other person. The rudeness of the characters first mentioned, would lead to the same inference.

Even if we grant the authenticity of all the words and characters in question, still, as those words and characters are but few, and as many gravely demented

persons can write not only as well, but far better, the testator *did not* manifest much intellect by writing in the course of his illness. His *ability* for such manifestation will be discussed in another place.

3d. *Pantomimic Gesticulation and Facial Expression*.—From the nature of the testator's disease, his gesticulation was necessarily more limited than that of a person enjoying the free use of all his limbs. But, from the testimony in evidence, it would appear to have been much more limited than one would expect from a person laboring under Mr. Parish's physical disabilities, yet retaining the normal condition of his mental faculties.

The principal, if not the only motions testified to as expressive of intellect, are, first, the nod or downward movement of the head; second, the shake, or horizontal rotation of the head; third, pointing with the fingers or hand; and, fourth, elevating the arm, the fore-arm flexed, with some of the fingers extended, the others closed. A few other motions are mentioned, but they are chiefly indicative of emotion.

As to the first two motions—those which are conventionally employed for the expression of affirmation and negation—there is a considerable discrepancy among the witnesses in regard to their ability to understand the testator in the use of them. At the interview in which Mr. Folsom asked him what his wishes were, in the event of his decease, respecting the disposition of the estates on Union Square and Wall street, the responses were a nod or a shake of the head, *according to the verbal form of the same question*. Mr. Kernochan (I. f. 863) and Mr. Folsom (I. f. 1144) testify that when they went to Mr. Parish's, carrying the will, and asked him if he wished to keep it, he both nodded and shook his head. Mr. Nicholas G. Ogden says that when the testator and his

wife were at the Phenix Bank, and Mrs. Parish had stated that Mr. Parish wanted something, he asked Mr. Parish various questions, and received "no answer but unmeaning motions," (I. f. 1475;) and that when Mrs. Parish suggested the trunk, and he asked Mr. Parish if that was what he wanted, he "made first an affirmative motion of the head, and then a negative motion to the same question." The testator, during a portion of his illness, frequently went to market; and Mr. Case says, "We never could find out rightly what to send him," "we never could tell what articles he did choose in particular at all." (I. f. 1891, 1893.) So they sent to his residence whatever they "thought he had been in the habit of buying before, and Mrs. Parish would send back what she didn't want." Mr. Jones says that at his first interview with the testator, at the time he carried the samples of cloth for pantaloons, "when Mrs. Parish pointed out one or two—showed them to him—he looked at them and nodded his head; then he looked at them again and shook his head; * * * * * this was tried two or three times." (III. f. 1640.) So no decision was made. At the second interview, when a sample was presented to him, with the question if he liked it, "he would nod his head, then shake his head," (III. f. 1645,) and the selection was finally made by Mrs. Parish.

This testimony exhibits an utter inability clearly to express even affirmatives and negatives, or approbation and disapprobation, by the movements of the head. Persons whose mental powers are unimpaired, and who possess the unembarrassed use of the muscles of the head, can express affirmation and negation as distinctly, as definitely, as positively, by motion, as by the verbal monosyllables usually employed for those purposes.

But, notwithstanding the tenor of the testimony

quoted upon this point, there is so much of an opposite import, that, in my apprehension, it cannot be doubted that, on some occasions, and within a limited range, the testator used the signs or motions in question, for the same purposes as they are used by others ; with the same intent, and with some degree of intelligence. He must have been mentally below the standard of any but the lowest grade of idiotic mind not so to have used them.

The pointing with the hand, or fingers, I conceive to have been employed with very much the same degree of intelligence and of uncertainty as to his intent, as the motions just discussed.

The fourth motion was very much used, generally in connection with the sound "nin, nin." It was considered, by most of the witnesses, as inexpressive of itself, but simply as an adjunct to the sound. In three or four instances, however, it was regarded as indicative of *number*, from the number of fingers which were extended. At most, this gesticulation had but an exceedingly restricted power in the manifestation of intellect. The reader of the testimony is left in doubt whether it, and the sound "nin, nin," by which it was accompanied, were really used with any clearness of intelligence and intent, or whether they are not rather to be classed among those senseless habits which the demented are so frequently accustomed to form.

Facial Expression.—There is a great diversity of testimony in regard to the expression of the testator's countenance. It varies, in divers grades, between the extremes, vivacity and stolidity, as well as between the other two extremes, almost constant cheerfulness or placidity, and habitual gloom. It is evident that, to some extent, he retained that tension and mobility of the muscles of facial expression which assist in the development and communication of the operations of

the mind. Yet, even with this, and with that degree of use of the other means of expression which it appears, from the foregoing considerations, that he still possessed, Mr. Gasquet, one of his intimate friends through many years—although he asserts that “there were moments when he seemed to look intelligently,”—says, “I could not understand him at all.” (II. f. 2039.)

Great stress has, by some, been placed upon the intelligent expression of Mr. Parish's countenance. Many persons so demented as to be entirely incapable of prudently disbursing ten dollars, still retain an intelligence of expression which, with no other means of deducing an opinion, might easily mislead a beholder into the belief of their mental soundness. This might result, in Mr. Parish's case, from the fixedness of long habit during half a century of sound-minded life.

From all the evidence touching the points thus far discussed under the head of intellectual manifestations, I arrive at the conclusions that the testator retained the usual physical means or powers of communicating the intellectual processes, or their results, to but a very limited degree; that he used those means less frequently and less extensively than would be expected from a person of sound mind laboring under his bodily disabilities; that he frequently employed them vaguely, indeterminately, confusedly—the same one often even antithetically—and without having any intent to impart thereby definite ideas and thoughts.

There are other considerations by which light may be thrown upon the inquiry into the intellectual condition of the testator. Of these, it is proposed to notice the following :

1. The power of suggestion.
2. Ability to read.

3. Attention while other persons were reading.
4. Transaction of business.

1. *The power of suggestion.*—The extreme disability of intellectual manifestation by the testator, is well described by one of his physicians. Dr. Markoe, in answer to the question, “had he the power of communicating any idea, in reference to any subject or object not then before him, and to which he could point?” replies; “Not directly—no, sir.” (II. f. 2118.) From this assertion is clearly to be derived the following significant and important conclusion.

Beyond the limited sphere of objects, or of concrete subjects “before him, and to which he could point,” all intellectual operations or results whatsoever which have been attributed to Mr. Parish, must have been suggested to him by some other person, previously to any indication that they were his.

The involved idea or thought must have originated in another mind, and have been presented to him for his approbation or disapprobation, assent or dissent, acceptance or rejection. Hence, the authenticity of those operations or results, as being primarily those of the testator, must be a matter indeterminate and doubtful; and the uncertainty and doubt are greatly increased by the indecisive and inconstant manner in which, as has been shown, he employed the methods of affirmation and negation. Even on the supposition that he had the ability to form a just conception, i. e. accurately to apprehend and comprehend whatever was suggested or proposed to him, still, there is no evidence that he may not have assented to, or dissented from, many propositions previously unthought of by him. If he could not so comprehend, the probabilities of assent to or dissent from previously unthought of subjects, are greatly increased. Thus the force of

nearly all of the most important testimony given in evidence of his mental soundness, is seriously impaired.

That a man of Mr. Parish's normal intellectual capacity, and his education ; with his firmness, his energy, and his enterprise ; upon being paralyzed in the organs of speech, and in the limbs of the right side, but retaining his sight, the use of the limbs of the left side, and the former powers of his mind, would, even in the course of a few days, find or devise some means of suggesting his wishes and his thoughts to the persons around him, is a proposition so reasonable, so consistent with what we know of human powers and resources, in short, so nearly self-evident, that it would command an assent almost, if not entirely universal. Thus, the witness Mr. Maedonald, testifies, in reference to himself, that, after he was attacked with hemiplegia, it was his first desire to communicate his ideas to the persons around him, and that he persevered "in some form or other," until he succeeded. Resorting to "signs," he found them insufficient. He asked for a book, intending to make himself understood "by pointing to the words and letters." An alphabet was then procured, and he used it. He thinks that he attempted to write, upon "the afternoon of the first attack," and is "certain" that he did "within three or four days." He succeeded in writing his name with his left hand, "four, five, or six days after the attack ;" and this, although his left side was weakened "to a great extent," by the paralysis. Aside from the fact that he did not write, there is no evidence that the left limbs of Mr. Parish were at all affected. There is direct testimony that they were not.

The signature of Mr. John F. Delaplaine (*Exhibit No. 261, III.*), written with his left hand, "a very few days after his attack" with hemiplegia of the right

side, appears as if made without much difficulty, and bears a striking analogy, in all its prominent individual characteristics, to the two signatures written anteriorly to the attack. Two cases, other than those mentioned in the evidence, in which the persons, to use the language of my informants, "write beautifully" with the left hand, recently came to my knowledge. One of the persons alluded to has hemiplegia of the right side.

I suppose that any good—or even fair—penman, can write his name legibly with his left hand. Why, if paralyzed only upon the right side, and retaining his mental ability, should he not continue so to write it? If he does not so continue, why shall we not infer that his mind, *at least to some extent*, is unsound? As, in connection with this subject, in the case of the testator, there appears to have been a disposition, in some quarters, to resort to a species of transcendental reasoning which I cannot regard as sound in physiology, pathology, or psychology, the following remarks, how trite soever may be the thoughts therein involved, may not be inappropriate.

Mind is recognized only in its manifestations. Hence by its manifestations alone can it be judged. These being idiotic, the person must be esteemed an idiot: and just in proportion as they are defective—the physical ability of manifestation remaining—must the mind be regarded as impaired. It will not do to say—True, these manifestations are idiotic, but nevertheless the mind itself is all right, perfectly sound.—This is mere hypothesis, conjecture, an assumed conclusion. For aught that is known, the psychic element of our being may, in its abstract nature, be equally sound in all men, the idiotic and the insane, as well as the sane. No one can disprove an hypothesis to that effect. We have no positive evidence that it is not so; neither

have we any that it is so; for, in judging of its condition, we cannot go entirely behind the corporeal.

Mr. Parish lived more than six and a half years after his attack, without finding or devising any method of communicating his thoughts. Furnished with materials of various descriptions for writing, he refused, after a few attempts, to use them. An alphabet upon a sheet of paper being placed before him, he neglected to avail himself of it; another alphabet, of very large letters, upon separate cards, being furnished, he treated this, so far as appears in evidence, with the same disregard. These facts, particularly when we take into view the numerous and powerful motives which, if his mind be in a healthful condition, must impel a man of Mr. Parish's wealth and position in society, to restore, if lost, the means of interchanging thought between himself and those with whom he may associate, are, of themselves, sufficient to prove, beyond a doubt, a mental incapacity amounting to dementia. Such, indeed, would be the general deduction from the premises.

Mr. Parish either *could* not write, or, having the ability, *would* not. The result of his attempt, of which we have the most positive evidence,—the characters which were interpreted “wills,”—is so rudely executed, and so entirely ambiguous, as to force the conclusion that his ability to write was no greater than that of a child when first beginning to make characters simulative of letters. That he could hold a pen, and move it, is shown. Why, then, should he produce this scrawl, indicative of no definite idea in his mind? Why, but that his mental faculties were as much depreciated from their normal standard, as this series of characters is inferior, in its power of clearly conveying any idea, to his writing prior to the invasion of the disease by which he was disabled.

But Dr. Markoe thinks that, retaining the ability to

write, he would not write ; that unwillingness “was the essence of the trouble.” (II. f. 2109.) To this it may be answered, that if a man with Mr. Parish’s normal mental ability, with his vast pecuniary interests and relations, and his many social associations, should, through “unwillingness” to make the effort to communicate, thus isolate his mind from the external world during a period of nearly seven years, and, by so doing, subject his friends to all the labor, the annoyances, the anxieties, the embarrassments, and the difficulties to which the persons surrounding the testator were subjected by his failure to communicate, then, as it appears to me, that “unwillingness” must be a positive obstinacy, indicative of delusion, or perversion of mind, which would justify his friends in placing him and his interests under a legally appointed guardian. The escape proposed to the proponent by this theory is from *dementia* to *mania*, from Scylla to Charybdis.

Did the failure of the testator to use the alphabet originate, likewise, in “unwillingness?” If it did so originate, then the remarks just made are here of so much the more forcible applicability as the effort required for the collocation of card letters into words is less than that of writing with the left hand. As a physical effort, it is of the very slightest kind ; as a mental one, it is facile and amusing to the most child-like mind possessing any healthful relish for order, or the establishment of harmony in the relations of surrounding things.

2. *Ability to Read*.—The testimony introduced in reference to the testator’s ability to read, is conflicting. If his vision was sufficiently good—and it appears that it was competent to the discernment of ordinary print—I perceive no reason excepting his failure to write and to use the card letters, to doubt that he could perform what may be termed the mechanical process of reading,

Persons who have learned to read well, upon losing their intellectual ability, even to a low grade of dementia, can generally read in this manner. The testator might have understood the words, as words, but that he could comprehend the ideas, unless very simple, conveyed by the language, that he could reflect upon them, analyze, compare, or "mentally weigh" them, and thence arrive at inferences, deductions, or conclusions, as he might have done previously to his attack, there is no evidence, at least I can see none in the case, which, in my opinion, is at all equivalent in force to the evidence of an opposite import.

It has been suggested, in connection with this subject and that which was last under consideration, whether it may not be possible, with mental abilities otherwise intact, to forget the normal relation between the idea and the characters used in conveying that idea. What is this "normal relation?" In respect to words, it can, in my view, consist solely in the condition that the word shall fully involve, and accurately convey the idea. I can conceive of no abnormal relation other than that which consists in the opposite condition,—that the word does *not* fully involve and accurately convey the idea. Thus, a man may have the idea "hat," and may intend to impart that idea; but if, in so intending, he use the word "cheese," he does not convey it. The above remarks are applicable to letters as well as to words.

A person may know the signification of a word when he reads it, and yet, when he wishes to express that signification, at another time, he may be unable, from temporary failure of recollection, to recall the word. This is of constant occurrence with persons of sound mind, and there is no doubt that, in cases of mental depreciation, the phenomenon may be still more apparent. But that a person long accus-

tomed to writing may read with comprehension, and yet be unable for years, in even a single instance, to form any word with letters, is a conjecture so unreasonable as to repel every shade of credence. At any rate, so far as known by me, the proposition awaits, for its reception as truth, the first particle of any thing like evidence.

3. *Attention while other Persons were Reading.*—Upon this subject, as upon the next preceding, the testimony varies. Wingrove says, he “paid very little attention to my reading of the paper to him;” (I. f. 1500.) Simmons, “He was generally in the habit of sleeping after breakfast, during the time of reading the paper,” (I. f. 1698,) and James Clarke, “He was generally asleep, or looking out of the window,—never minded it.” (I. f. 1738.) On the contrary, others assert that he listened with apparent interest. That he had the ability to understand some of the simple ideas which may have been expressed in that which was read to him I cannot doubt. Otherwise he must have been below the lowest conceivable condition of abject mental imbecility, where any intelligence remains. Further than this, the same remarks may be made, on this head, as in reference to that which it is alleged that he read himself.

4. *Transaction of Business.*—Outside the walls of his dwelling, the testator transacted comparatively little commercial or financial business of any considerable pecuniary magnitude after his attack. Neither abroad nor at home, so far as appears in evidence, did he at any time in the course of his illness engage in any negotiation or operation of the kind alluded to, without the presence of another person who was acting as his attorney.

In the minor business of life, we have seen by the testimony of Mr. Case, Mr. Austin, and Mr. Jones, that

in general he utterly failed to make his wishes understood. In the more important matters of the will, and the trunk containing his valuable papers, it has also been shown that Mr. Kernochan, Mr. Folsom, and Mr. Nicholas G. Ogden were unable to comprehend his desires or his intention; Mr. Folsom further testifies, that when the testator and his wife came to the office door, with business papers, Mr. Parish "would frequently or almost always take up the package, but would fail to separate or select the required paper." "Mrs. Parish," he continues, "would pick it out and hand it to me," (I. f. 1180;) and again, in allusion to the same interviews, "we always made great efforts to find out what Mr. Parish wanted, but never, to the best of my memory, has Mr. Parish ever been able to convey his wishes to me to my satisfaction." (I. f. 1181.)

The demand made to Mr. Tileston for the individual security of the Board of Directors of the Phenix Bank, if not unprecedented among capitalists, was inconsistent with his former practice, at least in the similar negotiation mentioned in the testimony of Mr. Withers.

Mr. Wiley testifies that the testator, at the time of the loan of \$20,000, persisted in requiring that a check should be drawn, after he had been told "that they had not so much money in bank," even until "he appeared to get furiously mad." No testimony shows whether he was, or was not, accustomed, before his attack, thus to over-draw upon his bank account; but I suppose it not to be the custom, nor as considered a sound business practice, in New York.

It is certainly remarkable that Mr. Parish, with his wealth, and his regular, methodical, and long confirmed business habits, and accustomed as he was to having his accounts kept with considerable minuteness of detail, should have ceased to have them so kept, and to

introduce a new form of keeping them, soon after his attack.

The testimony as to the manner in which, and the extent to which the testator was concerned in the management of his estate, in the privacy of his own residence, is so inconsistent with the larger part of that which portrays his transactions when more in public, as well as with much of that which regards his other habits, and the other evidences of his mental condition when at home, that it appears impossible to reconcile them. It is easily to be conceived that persons long associated with a man conditioned as was the testator; continually obliged to propose, to suggest, to inquire; compelled, by the necessities of the case, virtually to perform most of the mental processes for both parties of the intercommunication, might, unsuspectingly, sometimes mistake their own thoughts for his thoughts, and even acts essentially their own—being first openly suggested by them—for acts essentially his. Evidences of something like this are not wanting in the testimony. They are most conspicuous in that of the coachman, Edward Clark. The evident unconscious talking with himself, in the narrative of ostensible intercommunication with the testator, at their morning interviews, (II. f. 2147, *et seq.*) would be ludicrous, if occurring in connection with a less serious subject. Minds of greater intelligence are not free from some of the laws which govern minds of an inferior grade.

Mr. Henry H. Ward testifies that when Mr. and Mrs. Parish came in their carriage to the front of his office, for the investment of funds, Mr. Parish selected, from the notes and securities exhibited to him, such as he wished to purchase. But Mr. Ward thinks that Mrs. Parish looked at the paper exhibited, and that "it is highly probable" that she said something, or

asked some questions about some of it. (II. f. 1929, '30). Under the circumstances, no great degree of intelligence, sagacity, or judgment was requisite to the selection. Doubtless his mind was *habitually* imbued with favor to that which Mr. Ward would offer him. Habit, a slight degree of memory, and the other aids mentioned were sufficient for the purpose.

I once had a female patient so entirely demented that she knew not the names of the persons with whom she had been associated for years ; did not even recognize them, at any time, as persons whom she had ever met previously to that time ; and who, while walking in the gallery of that ward of the asylum in which she was placed, said she was 'walking up —— street,' mentioning a street frequented in her early life ; yet who would correctly repeat long articles of prose which had been committed to memory prior to the invasion of her mental disorder. The act of the testator, in making the supposed selection of paper as above-mentioned, requires a memory no better than that of this patient, and a mental capacity but little, if any thing superior.

Mr. Bryson says that the testator made his mark upon two transfers of stock without being shown upon what part of the paper to place it. (II. f. 226, 331.) If the fact is accurately stated, it merely represents an act which might be done by a person with mental faculties greatly impaired.

Several gentlemen have testified to their belief of the testator's ability to transact business,—some of them specifying the particular business which they, with the usual assistance which he received, had done with him in the course of his illness ; and others conveying an idea of more general, or broader ability. No one of these gentlemen has said, or intimated, that he would have intrusted the negotiation or transaction

of any important commercial or financial matter of his own, to the testator. A question seeking an answer upon this point, might, I think, very pertinently have been proposed to them.*

Former habit, a comparatively small degree of memory, and the constant presence of an interested person, to suggest, to prompt, to interpret, to explain, and generally to execute, might enable a man of very seriously impaired mind, to transact, in the method in which he did it, all the business which was transacted by the testator between the day of his attack, in 1849, and that of his death, in 1856.

Had his intellectual capacity remained intact, who can doubt that, under all his disabilities, he might have performed much of his out-door business alone; and not only so, but that, had he—as we assume that he would have done, if his mental powers were perfect,—prepared himself in some way to communicate his

* A suit to set aside a contract, on the ground of the alleged mental unsoundness of one of the parties thereto, was tried before the Supreme Judicial Court, sitting at Lenox, Massachusetts, in May, 1856. I was called to hear the testimony, and give an opinion deduced therefrom. One of the witnesses was a gentleman, well known as one of the most successful financiers in the city of New York. He testified that at a period subsequent to the date of the contract, he requested the party whose mental condition was in issue, to show him the boundaries and surveyor's monuments between the estates of said party and himself; that they went over the grounds together, and said party pointed out, with perfect readiness and accuracy, the boundaries and monuments, and conversed intelligently about them. As this was the only subject upon which the witness was called to testify, nothing was elicited from him, in either the direct or the cross-examination, which evinced impairment of the mind of the said party. Meeting the gentleman afterwards—but before either counsel had commenced his argument,—I remarked to him that, notwithstanding his testimony, I had testified to an opinion that the party was in a condition of dementia. Said he—"Had they but asked me if I would have taken the man's paper, believing it to be legally valid, at the time he showed me the boundaries and monuments, I should at once have answered—'No;' " or words to that effect.

The Court set aside the contract for reason alleged.

wishes and thoughts, he might have continued his business habits, unassisted by an attorney, and in his old sphere, almost as fully as before.

3. *Habits and Customs.*

After the apoplectic attack, the testator lived so monotonous a life, moved in a sphere so comparatively limited, and was so constantly under the surveillance, and, to some extent, the direction of other persons, that it might almost be said that his former habits and customs were all superseded by the routine of a few new ones. This is true to an extent which, as appears to me, is incompatible with the supposition that his intellectual powers retained their normal integrity. There was nothing in his physical disability which need have prevented him from frequently going to his office, and to other places of business, unaccompanied except by his valet; nothing absolutely requiring him entirely to relinquish his old associations at the club; nothing necessarily detaining him, throughout his nearly seven years of invalidity, from church.

It is consonant with what we know, to believe that the millionaire, limited in his mental resources, and attached to his business associations, if disabled as was Mr. Parish, but still vigorous in intellect, would, even more frequently, if possible, than before, resort to his place of business; that he would make considerable effort, if necessary, so to do; and if his store or office were difficult of access to a person so disabled, that he would at once procure another, which might more easily be reached.

The testator relinquished, quite unnecessarily, if his mind were sound, one favorite custom to which, on the condition just mentioned, he doubtless would have clung with still greater tenacity than before, for

the purpose of relieving the tedium of his comparatively solitary and routine life. Prior to the attack, according to Mr. Gasquet, he was very fond of his game at whist; and, as testified by Messrs. Webb, English, and Emmet, he frequently played that game at his club, to which, it appears, he was accustomed to repair nearly every evening; and, agreeably to the testimony of Mr. Henry Delafield, he had card-parties at his own house. Subsequently to the attack, he never went to the club; never had card-parties at his residence; never played whist or any other game; never attempted so to play; and was never even invited to take a hand at cards when his family were playing. In my view, this important change is very strong evidence of mental impairment. If the intellectual ability and the desire to play had remained, the physical obstacles could easily have been surmounted.

4. *Will; force of Character.*

From the tenor of the evidence bearing upon the subject, it appears to me that the chief power of the will, which remained to the testator after his apoplectic attack, was merely the impulsive force of irritation and anger; not that calm, self-reliant and effective energy which demands and commands not only personal respect, but obedience to the mind's known behests. Thus he could frighten Mr. Austin, but he had not that force of character which would enable him to go to his store alone, in contravention of the orders of another person. By "gesticulation," he brought Major Delafield to a determination never again to thwart his wishes; but he could not make his coachman drive to the store from Mr. Root's, nor did the force of his presence, in his own library and kitchen, when he

was attempting to give directions for breakfast, prevent a call of the roll of breakfast edibles, instead of the immediate mention of buckwheat cakes.

B. ANTECEDENT, ATTENDANT, AND COLLATERAL FACTS AND CIRCUMSTANCES.

1. *Hereditary Predisposition.*

In the whole range of physiology and pathology, nothing is more positively established as a truth than the transmission of disease, or a predisposition to disease, from parent to child. Tuberculous, arthritic, and other diatheses are thus very frequently perpetuated. All forms of cerebral disease accompanied by insanity, are far more frequently found among the descendants of persons who suffered from those diseases, than among any equal number of persons descended from parents who had not so suffered.

It appears in evidence that the father of the testator was subject to attacks of cerebral congestion, in the last of which he died. (Kernochan, I. f. 902.)

2. *Disease symptomatic of Cerebral Lesion.*

In the case of the testator, there was a remarkable combination of diseases the symptoms and signs of which are indicative of encephalic lesion.

Prior to his departure for Europe, as asserted by Mr. Kernochan, he had two or three attacks of determination of blood to the head. (I. f. 902.) When at Baden Baden, in the summer of 1843, he had a similar attack, but, in his own language, (III. Exhibit No. 235,)

“more severe;” and, in the language of his wife, (III. Exhibit No. 133,) “frightful.”

“During the latter years preceding his attack,” (the one next to be mentioned,) says Dr. Delafield, “he had several slight seizures threatening apoplexy.” (I. f. 2036.) Whether this allusion includes the attacks already mentioned, or not, is not shown.

On the 19th of July, 1849, he was again seized in like manner, the attack now being of such severity as to constitute apoplexy. This was immediately followed by hemiplegia of the right side, and destruction of the power of articulate speech, entire for a short period, and, as has been shown, nearly entire throughout his subsequent life.

Commencing in the autumn of 1849, and extending over nearly the whole period of his subsequent life, but becoming less frequent as time progressed, a paroxysmal, convulsive disease affected him. This was evidently epilepsy. Dr. Markoe speaks of it as such; and James Clarke, in describing the paroxysm, used the following language: “trembling, choking, frothing, and foaming at the mouth—black in the face.”

Dr. Wilkes, who visited him in consultation upon his impaired vision, about the beginning of the year 1852, says that he then had traumatic amaurosis. (I. f. 222.)

This succession and combination of disorders emanating from the great nervous centre, shows that there must have been very considerable cerebral disease; and, as the hemiplegia and loss of the power of speech were permanent—the paralyzed leg alone improving to some extent—it also shows that at least an important part of that disease was organic.

In cases of apoplexy followed by paralysis, there is generally some mental impairment. It differs in degree in different cases, the extremes being some slight peculiarity, upon the one hand, and utter de-

mentia, upon the other. Even in cases where recovery ensues after a duration more or less protracted, a defect of memory, or some eccentricity of mental manifestation is generally observed, growing less and less apparent as convalescence is being perfected.

The tendency of epilepsy is perhaps always towards depreciation and perversion of the mental faculties. Large numbers of epileptics are found in many of the institutions for the insane. As there was no *post mortem* examination in the case of the testator, the source of the epilepsy is merely to be conjectured. But, as that disease supervened upon the apoplexy, it is not unlikely that the former originated in the lesion which caused the latter.

We have, then, from this catalogue alone of central nervous disease under which the testator suffered, much reason to infer that there was serious mental impairment. The conclusion is not absolute—it is not a necessary deduction from the premises; because, in cerebro-psyche pathology, there are few, if any, rules of universal application. Still we have here causes very adequate to the effect which is supposed to have been produced.

3. *The Nature of the Acts the validity of which is contested; that is, the Tenor and Spirit of the Testamentary Codicils.*

After making his will in 1842, the testator lived nearly seven years without adding to it, or in any way modifying its conditions, although he talked with Mr. Havens about making some modifications. As originally executed, it remained at the time of his attack with apoplexy and paralysis. Within the first five years next following the date of that attack, three

codicils were appended to it. These codicils not only alter it, but reverse or abolish some of its most important provisions. I allude to the revocation of the appointment of Daniel Parish as one of the executors, "and the gift of ten thousand dollars to him, as executor;" to the revocation of the thirteenth article, by which Daniel Parish and James Parish were made residuary legatees; and to the introduction, into one of the codicils, of a clause making Susan Maria Parish the residuary legatee.

No cause is shown in the evidence which, as I apprehend, could possibly have suggested, in the mind of a man such as the testator appears to have been, and provoked to execution, so important a change in testamentary provisions and bequests. No cause of alienation of feeling towards James Parish is even hinted at. The letters of the testator to Daniel Parish, written when the former was in Europe, in 1843 and 1844, show that he and Daniel were then upon terms of the most kindly and friendly intercourse. No alienation is shown after his return from Europe, and prior to the attack. The only alleged cause for alienation after the attack, is the fact that Daniel Parish went into the sick chamber of the testator, unbidden and in contravention of the known wishes of the testator's wife. But the manner in which the testator received his brother Daniel at a subsequent interview, gives no reason to believe that such alienation existed. If it did exist, so far as appears it must have been from an insufficient cause, and hence must have originated in one of those whims or caprices which often produce a change of feeling in the insane towards those persons who have been among their most intimate and best friends.

If the testator's mind had been unimpaired, it is more likely that, having determined to make changes

in the testamentary disposition of his property, he would have made a new will rather than alter the one already made, as it was altered. He hardly could have failed to perceive that his physical condition was such as to give rise to the suspicion of mental disorder or defect, and that, under these circumstances, were the will left as it has been left, there was a prospect that his large estate would almost inevitably become involved in litigation. To the issue of a legal contest, he could not have been willing to subject the estate; and from the labors and annoyances of such contest, he would have endeavored to preserve his nearest relatives.

4. Acts in which the Testator resembled the Insane.

First.—It is intimated that the testator ate voraciously. Mr. Kernochan says that he sometimes ate “with rather too good an appetite;” Wingrove, that “eating seemed to be his predominating passion;” and James Clarke, that “he was very ravenous for dinner.” But Dr. Delafield says, “In his best health, before his attack, he took a great deal of food.” Of the relative quantity taken, before and after the attack, nothing is said in the testimony. A large proportion of the insane, especially those who are demented, eat rapidly, and in inordinate quantity. The gratification of his palate, as is evident from numerous assertions in the testimony, was one of the principal enjoyments of the testator, during his illness; and for the attainment of this end he set at naught the advice of his medical counsel.

Second.—In his irritability and irascibility he resembled many of the demented, and a large proportion of the epileptic insane.

Third.—The combined act of putting his fingers

into his mouth and making a guttural sound, as testified by Messrs. Wiley, Gasquet, and Clarke, is strikingly similar in its nature to the acts of the demented.

Fourth.—The same may be said of the repetition of the sounds of affirmation and negation. One of the witnesses says that “yah” was generally repeated, and “nah” “four, five, or six times;” and nearly all who allude to the subject attest to this kind of repetition.

Fifth.—The abundant use of the sound “nin, nin,” may be placed in the same category.

The determination of the testator to have the window-blinds open, when he slept in the room under the conservatory and nearly on a level with the street, thus exposing his room and its occupants, at an early hour in the morning, to the passers by; and his conduct as portrayed by Mr. Campbell, (III. f. 1879,) when the witness saw him in front of the house, holding upon the leader which conducts the water from the roof, “looking up,” and “uttering a cry,” indicate a serious impairment of mind. When he was in health, his justifiable pride, his self-respect, his respect for others, his sense of propriety, all would have revolted at the idea of acts like these, and his reason would have dictated abstinence therefrom. It seems impossible that he could have perpetrated them and yet retained any considerable degree of his former even purely intellectual faculties.

5. Treatment of the Testator by his Family.

Several facts appear in evidence which betray a consciousness of the testator's mental impairment in the minds of the members of his family, though perhaps this consciousness was instinctive rather than the offspring of reflection. These are :

First.—The testator was rarely left alone with his relatives, friends and acquaintances out of his own household, and generally, in the exceptional cases, was so left only for a few moments.

Secondly.—According to the testimony of Thomas Wingrove, (I. f. 1523,) he was not permitted to go to his store or office alone; that is, without the company of some person other than his valet and his coachman. There is no evidence that he ever did go thither, so unaccompanied, except on Sundays.

Thirdly.—He did not ride alone, excepting at times, upon the Sabbath, and then the route taken was chiefly in the most unfrequented parts of the city, and the time during the hour of morning service at the churches.

Fourthly.—He rarely carried money. William Brown, his valet for more than three years, says, "I have never seen him with money in his pocket." (II. f. 1422.)

Fifthly.—When Mr. Folsom, in the course of an interview with the testator and his wife, proposed the trial of block-letters, to enable the former to communicate his thoughts, Mrs Parish, as is testified by Mr. Folsom, said to Mr. Parish, "What impudence in Mr. Folsom to propose any such thing." (I. f. 1149.) The remark is such as might be made to a petulant child; and I can account for it only on the supposition that it was suggested by a consciousness that Mr. Parish had become so like a wayward child that he would be offended at a proposition to resort to means so trivial. If Mr. Parish's mind were at that time what it once had been, he must have felt—as any rational and reasonable person in his condition would feel—thankful to any one who might suggest an effectual method, how humble or insignificant soever, of relieving him from one of his greatest embarrassments.

Sixthly.—It appears that the testator was particu-

larly fond of buckwheat cakes, and that his medical adviser was opposed to his eating them. He was accustomed, before retiring at night, to call—in his way of calling—the attention of his wife or the cook to the subject of breakfast for the following morning. It appears to have been understood that he always wanted cakes of the kind just mentioned; but when suggestions were made to him “in the library,” William Brown testifies that different kinds of food were mentioned, “always omitting, if possible, buckwheat cakes.” He would be irritated until they were named. Another witness, (Fisher,) whose testimony would not be referred to in this place were it not, in essence, corroborated by others, says that when the testator went to the kitchen, upon the occasions alluded to, the cook would ask him “a great many questions, to which he said no; when he came to these cakes he smiled and said ‘yes.’”

Seventhly.—Although, as has been shown, he enjoyed and frequently practised card-playing, previously to his attack, yet subsequently he was never asked to play when other members of the family were engaged in the game.

Eighthly.—The shoes purchased for him during his illness cost, as says Mr. Sammis, “about ten shillings,” or one dollar and twenty-five cents per pair. (III. f. 1618.) There is no evidence of the cost and kind of shoes worn by him prior to his illness, but there are many reasons for the belief that they were very different from those just referred to.

The facts contained in these eight clauses, trivial as some of them might appear at first view, throw more light upon the question at issue, than is derived from many of the matters in evidence, which, in some respects, are of far greater magnitude, but which are not susceptible of so positive verification.

6. *Language of other Persons in Reference to the Testator in the Course of his illness.*

Theodore Austin says that after the testator "flurried" his cane in the carriage, he (the witness) told Mrs. Parish that Mr. Parish "was crazy, or not in his right mind." (I. f. 1927.) Mr. Folsom asserts that at the store, in presence of the testator, his wife, Mr. Daniel Parish and Mr. Kernochan, he said to Mrs. Parish, in allusion to Mr. Parish, "If he should ever come to his mind," &c. (I. f. 1152.) He also testifies that he said to Mrs. Parish, at the interview with herself and Mr. Parish, on the 25th of August, 1849, "I consider Mr. Parish to be of unsound mind, and incapable of transacting business." (I. f. 1126.)

Mr. Kernochan states (I. f. 854) that on the 18th of August, 1849, Drs. Johnston and Markoe thought that Mr. Parish's mind was not in a condition to transact business. Both of these physicians, however, testify that they do not recollect that they expressed such an opinion.

Mr. Campbell says that he mentioned, soon after its occurrence, the scene in which the testator had "hold of the leader" of water from the roof, "was looking up" and "uttering a cry;" and being asked if, when he mentioned it, he also expressed his judgment that Mr. Parish was an idiot, his answer is, "yes, sir, I have said that." (III f. 1897.)

Thomas Wingrove says, (I. f. 1575) "I explained to Mr. William Delafield, as early as the third day of my being in the service, that if I thought he was engaging me to attend or wait upon a gentleman like Mr. Parish, I would not undertake the situation on any consideration. I said so, my belief being that Mr. Parish was much astray."

It appears that the remarks here quoted were made in all seriousness, and under the full belief that what is therein expressed was true. Hence they are of no inconsiderable value in the resolution of the problem to be solved.

7. *Opinions of Witnesses in regard to the Testator's mental condition.*

Mr. Kernochan, who "knew Henry Parish fifty-six years," was for many years one of his partners in business, and "in the constant habit of visiting at his house," says, in allusion to the whole period of the testator's illness, "I didn't think he knew much, * * * I didn't think he had much mind." (I. f. 889.)

Mr. Gasquet, during eleven years a partner of the testator, and "on terms of intimate acquaintance with him," and who visited him from seven to ten times, annually, on several of the years of his illness, says, "I should have judged that he was not in a state of mind to conduct any business. * * * * I should say that his mind could not have been active and clear." (III. f. 2011.)

Mr. Folsom, who kept the testator's accounts twelve years, and who testifies that he had "a friendly intimacy" with him, says, "I think through the whole period (of his illness) he was not far removed from an imbecile." (I. f. 1185.)

Mr. Wiley alone, of all the persons immediately connected, as partner or accountant, with the testator in business, testifies in a manner implying belief of his mental soundness. He says, "his mind appeared to be well-regulated as to business he was familiar with, or had been familiar with in good health." (II. f. 71.)

Mr. N. G. Ogden, speaking of the testator at the

time of the interview relative to the delivery of the trunk, says, "I could not satisfy myself whether he was of sane mind, or knew what he wanted, or not." (I. f. 1474.)

Of the five men who were employed as nurses or valets of the testator, George S. Simmons (I. f. 1717) testifies, in reference to his mental condition, "I should not think it perfect;" Thomas Wingrove, (I. f. 1556, '7,) "I considered Mr. Parish very much astray in his mind;" and James Clarke, "I think his mind was not right," (I. f. 1752). William Brown, on the contrary, says, (II. f. 1751,) "I considered his mind strong and healthy, perfectly understanding all I ever said to him." The fifth of these witnesses (Fisher, II. f. 993) says, "I always thought, and think still, his mind was sound;" but Mr. Barber testifies (III. f. 1593) that this witness told him that Mr. Parish was not in his right mind."

Mr. Case, who was acquainted with the testator before the attack, and who subsequently, at his market, saw him many times, when asked for his opinion says, "I never could make him understand anything at all—of course I could not tell what he thought." (I. f. 1896.)

Mr. Austin, likewise previously acquainted with him, and who often saw him, after the attack, at Washington market, thinks he "was not in his senses, or right mind." (I. f. 1914.)

Mr. Sammis says, (III. f. 1621,) "I got the impression the first time that he came to the store, that for some cause or other he was not capable of doing business, and I never lost that impression;" Mr. Jones, "I consider he was imbecile," (III. f. 1649;) and Mr. Mulligan, "I think it (the testator's mind) was rather in a state of disorder." (I. f. 1886.)

Mr. Sammis had no inter-communication with the testator, although he saw him at the carriage in front

of (the witness's) store, a considerable number of times. Mr. Jones had but two interviews, and those only in reference to the selection of cloth for garments; and Mr. Mulligan, but one. The opinions of these witnesses are, therefore, of less value than that of those who here precede them.

Other than Dr. Delafield, the family physician of the testator, four physicians who had visited him professionally in the course of his illness, have given their opinions of his mental condition.

Dr. Dubois says, "the condition of his mind appeared to be clear, sound." (II. f. 190.) Dr. Dubois was called to see the testator specially in consultation upon the disease of his eye, and had no intercommunication with him upon any other subject. A large part of the demented patients in the institutions for the insane could have answered intelligently upon such a disease.

Dr. Wilkes says, "I think his mind was clear and capable of transacting the ordinary avocations of life." (II. f. 229.) Dr. Wilkes questioned him only in regard to his vision, his diet, and the condition of his bowels; and all the questions proposed, excepting those upon the subject first mentioned, were answered by Dr. Delafield. Hence, the objection to the opinion of Dr. Dubois is applicable to that of Dr. Wilkes.

Dr. Johnston says, "he appeared to understand simple questions regarding his health." (II. f. 413.) The same may be said of a large majority of the inmates of the hospitals for the insane. Dr. Johnston cautiously adds, "I cannot say that he might not have understood questions equally simple regarding other affairs."

Dr. Markoe, speaking of the testator's mind, says, "with the exception of the last few weeks, I believe it as sound—the last week or two I should say." (II. f. 2031.) In justification of this opinion, Dr. Markoe

testifies as follows: "he possessed memory, perception, comparison, judgment, and, in fine, all the ordinary faculties of the mind," (II. f. 2029;) and in proof of this, or of his power of spontaneity, Dr. Markoe says, "he could call the attention of anybody that was near him, spontaneously and without suggestion; an act showing perception, memory, judgment, and many other faculties of the mind, which he could thus give expression to spontaneously." (II. f. 2124.)

If the mere ability to call the attention of a person present be evidence of the existence of ALL those mental faculties, and consequently of soundness of mind, then there is little need of hospitals for the mentally alienate, and nineteen-twentieths of the persons now at those institutions are illegally and improperly detained.

Mr. Prime's opinion is, that "he knew what he was about." (III. f. 5.) This expression, in the case before us, is ambiguous. In the literal meaning of it, it is true of most demented persons.

Mr. Webb says, "I do not entertain a doubt that his mind was as clear in relation to ordinary intercourse, as at any time previously." (II. f. 669.) This is indefinite. As the phrase "ordinary intercourse" is usually understood, Mr. Webb's language might be truthfully applied to some of the most whimsical of demented patients.

Mr. Grimmell, (II. f. 1945, '6,) and Mr. Tileston, (II. f. 456, '7, '8,) believe, as appears from their testimony, that the testator, by sounds and motions, could give comprehensible expression to abstract thought. In all the testimony there is no evidence of such ability. On the contrary, all that bears upon the subject is of import directly opposite; and, as has been seen, Dr. Markoe expressly declares that the testator had not that ability. Thus, one of the most important premises whence the two gentlemen mentioned, (Messrs. Grim-

nell and Tileston,) derived their opinion, is taken away. If they were mistaken in the premises, why may they not have been in the conclusion?

Some of the gentlemen who testify more or less strongly to a belief of the testator's mental soundness, had but little opportunity for observation. Mr. Donaldson and Mr. Gibson each had but one interview with him; Mr. Webb but two short interviews in the street; Mr. Bryson but two, and those upon the one subject of a transfer of stock; and Mr. Dunning, who condenses his opinion into the word "sound," had no intercommunication with him, but was present as a witness at the two interviews between him and Mr. Bryson.

Several witnesses to whose opinions no allusion has been made, and who had considerable—some of them extensive—opportunity for intercommunication with the testator, have testified, with a diversity of expression, to the general proposition of his mental soundness. Some of these gentlemen were intimately connected, by social alliance, with the testator. I well know that there are cases in which the mental ability of a person is regarded, by his casual acquaintance, as much inferior to what it is known to be by those who are in daily social intercourse with him. Yet, friendships long-enjoyed, and the interest and sympathy which are among its results, are not without their influence; and, in the present case, there is such a mass of testimony, derived from various sources, tending to the demonstration of the fact that the testator's mind was impaired, that I am forced to the belief that those gentlemen were mistaken.

With this exposition of opinions, and the comments upon them, I leave this portion of the evidence. The other matters so fully set forth in the testimony, are sufficient for the purpose of this investigation. A

brief *résumé* of them, or of the inferences derived from them, following more nearly than in the foregoing investigation, their natural order, is as follows :

1. The father of Henry Parish died in an attack of cerebral congestion.

2. Henry Parish had several attacks of cerebral determination ; and, at length, on the 19th of July, 1849, apoplexy, immediately followed by hemiplegia of the right side, and loss of speech.

3. During a large part of his subsequent existence he was subject to epileptic convulsions ; and, at one period, had symptoms of traumatic amaurosis.

4. During the whole period of his life, after the apoplectic attack, some of his emotions were easily excited. He frequently shed tears, was irritable, irascible—sometimes yielding to violent explosions of anger.

5. The principal energy of his will appears to have rested in those paroxysms of anger ; his force of character having become so far impaired that his servants did not hesitate to annoy him by evasions, and to act in contravention of his wishes.

6. He uttered but few sounds, and those which were apparently intended for words, were mostly so employed that no confidence could be placed in them as expressive of a determinate wish or thought.

7. He sometimes used the motions of the head expressive of affirmation and negation, in the same indefinite and indeterminate manner.

8. Although retaining the use of his left hand, he did not learn to write, and of the results of his few attempts, the only one that is fully authenticated is so imperfect as to be entirely unintelligible.

9. Large letters, upon cards, being furnished for the purpose of communication, he failed, so far as appears, to use them.

10. Thus, for more than six years, and until his decease, “ he had not the power of communicating any

idea, in reference to any subject or object not then before him, and to which he could point."

11. He not unfrequently utterly failed to convey an opinion, a wish, or a preference, even when this might have been done by pointing, or by the usual affirmative or negative motion of the head.

12. He never attempted the transaction of any important pecuniary business without the presence and, almost invariably, the assistance of another person, acting as his attorney.

13. He did not go even to his own office, on business days, unaccompanied by that attorney.

14. From a period but shortly subsequent to his attack, the former mode of keeping his accounts was entirely abandoned.

15. In one negotiation a condition was required inconsistent with his former practice; and in another, a paper was drawn under circumstances incompatible with the principles usually followed by mercantile men.

16. He forsook his usual places of resort—those of business almost entirely—his club, the houses of his friends, and his church, absolutely.

17. His card-parties at home were discontinued, and his favorite game of whist wholly abandoned.

18. In several respects, his acts and his acquired peculiarities resembled those of some classes of the insane.

19. Some of his acts were so entirely repugnant to the self-respect, sense of propriety, and judgment of a gentleman such as he had been, that they can be explained only upon the supposition that his intellect was seriously impaired.

20. The course pursued with him by the persons in whose charge he was, or by whom he was imme-

diately surrounded, appears, in several respects, to have been based upon a consciousness that his mind was impaired.

21. No single act or mental manifestation is proven, which, under his circumstances at the time of its occurrence, is inconsistent with serious mental impairment.

22. Some of the witnesses expressed their opinion, during his life, that his mind was unsound.

Comprehended by these clauses, there are so many evidences of mental unsoundness, extending over all the sphere of means by which emotion and intellect are manifested, and over all the relationships of the testator to the world around him, that I arrive at the following conclusion :

It is my opinion that the mind of Henry Parish, from the time of his attack, on the 19th of July, 1849, until the day of his decease, was in that condition of unsoundness, or impairment, which is technically termed dementia; and that this unsoundness or impairment, was of such extent as to disqualify him for the execution of the codicils in question, or the transaction of any important business.

PLINY EARLE.

LEICESTER, MASS., *September*, 1857.



APPENDIX.

Since my opinion upon the mental condition of the late Henry Parish, deceased, was written, my attention has been directed to an article headed by the proposition, "To what degree are the intellectual faculties affected in cases of apoplexy and hemiplegia?" and published in the September issue of the "New York Journal of Medicine." This article appears to have been suggested by the case of Henry Parish. It would be a work

of supererogation to notice it in this place, if the arbiter in the said case were practically conversant with insanity;—if by long association with the insane he had learned not only the powers of which their disease has deprived them, but more especially *the powers which it still has left*. This not being the fact, I take the liberty to raise the following objections against the applicability of the contents of that article to the case now in issue.

1st. *Nearly all the cases mentioned in it were observed and recorded "for a different purpose" than that of ascertaining the mental condition of the patients.*

The author of the article appears to think that this fact clothes those cases with especial value, as authority. Upon this point I cannot agree with him. The allegation or the intimation that the best method of ascertaining the truth upon *one* medical subject, is to resort to the recorded investigations upon *another* subject, is a doubtful compliment to the sagacity, skill and judgment of the medical profession.

2d. *Being observed and recorded "for a different purpose," it is not even to be presumed that the observers always, or generally, directed their attention to the mental condition of the patients, with that close and persevering scrutiny which is essential to a correct decision.*

Most of those cases were undoubtedly observed under the common opinion quoted in the article aforesaid, from Valleix: "It is rare that a moderately severe attack of sanguineous apoplexy does not produce a certain degree of alteration of the intellectual faculties," &c., and the observers, looking mainly toward their principal aim—the morbid anatomy of the disease—did not question that opinion, or seek at all to investigate its claims to truth. No better evidence of this is needed, than the fact that Andral, in the fifteen pages of comments which follow his seventeen cases of apoplexy, makes no allusion whatever to their mental condition.

3d. *Those cases were not observed by experts in mental disorders.*

I claim for men long engaged in the specialty of insanity—that which I freely grant to the surgeon, the obstetrician, the oculist,—superior knowledge and superior skill in the diseases to the observation and treatment of which they have been devoted.

4th. *In a large proportion of the cases no mention is made of the mental condition of the patients.*

In the cases thus defective, the supposition that some mental impairment existed is as justifiable as its opposite.

5th. *In some cases classed among the mentally sound, such soundness is doubtful.*

Of one patient it is said, "she lost her speech, but preserved, to a considerable degree, her intellect;" of another, "after a time he recovered

sufficiently to write for one of the weekly journals, although his memory became defective, and his mind frequently confused ;* of a third, "the patient was not cured, though she had recovered her senses ; she lived some time without being able to articulate a word ;" and of a fourth, "it was reported in Paris that he was mad, but I (Portal) saw that it was less a loss of reason than of the power of expressing himself."

It does not strike me that in these cases absolute integrity of intellect is shown to have existed.

6th. *The entire absence of strict analogy between these cases and the case of Henry Parish ; and, in the larger part of them, the comparatively few points of resemblance.*

In some of these cases consciousness, at the invasion of the disease, was *not* lost, in that of Henry Parish it *was* lost ; in many of them speech was unimpaired, in his it was nearly destroyed ; in several of them, even of those classed among the sound in intellect, death occurred at periods varying from two days to twenty-five days after the attack, in his, life was protracted more than six years ; a considerable proportion of them terminated in recovery, his only in death ; in some of them the attack was comparatively slight, in his, severe ; in some of them the patient learned to write, he did not ; some of them used a great diversity of gesticulation for the purpose of expression ; his gestures were few and inexpressive. Other points of non-resemblance might be mentioned ; but these are sufficient.

7th. *In some of the cases of loss of speech, it is assumed that the intellect was sound because the patients themselves were unconscious of its impairment.*

The patient's opinion of his own mental condition, especially in diseases generally or often accompanied by impairment of the mind, is a very singular criterion to be adopted by a medical man. If applied to the inmates of the hospitals for the insane, those institutions would soon be vacated.

8th. *In most of the cases accompanied by loss of speech, the inference of mental soundness cannot, in my view of the subject, be drawn from the premises.*

An intelligent expression of countenance, the apparent comprehension of conversation upon simple topics, and the ability to reply, by

* The first series of italics in this case, are those of the author of the article : the second are mine. The author remarks that a man who could thus "labor for his support by writing for the weekly papers, may be esteemed to have still possessed a fair share of intellect and energy." I am not disposed to deny the proposition, but I recollect that periodicals are or have been published at three, if not more, of our institutions for the insane ; that a very considerable proportion of their contents were written by the patients ; and that many of the articles of this class would do no discredit to "the weekly journals." A moderate library of works written by the insane might be collected.

signs, to questions, and to perform, when requested, some trivial act, are received as evidences of an unimpaired intellect. Thus, in one of Dr. Clark's cases, it is assumed that the patient's mind was sound because his "countenance was intelligent, he heard and understood all that was said to him, would do as directed, assisted in taking care of the patients and administering their medicine." Apparently as a positive demonstration of the intellectual integrity of this man, it is related that, upon request, he went to an adjoining room, and from a number of instruments of the use of which it was supposed he was ignorant, selected one, *which had been described to him*, and returned with it. A large majority even of what are called "demented" patients, are able to perform errands more difficult than this, more intricate, and requiring a greater degree of intellect. This is verified daily in the hospitals for the insane.* In the schools for idiots, at Paris and Berlin, I have seen many of the pupils engaged in exercises which, in their requisitions of intellectual power, throw entirely into the shade this *test act* of the patient of Dr. Clark : and it is no unjustifiable presumption to aver, that if those pupils were suddenly deprived of speech, still retaining all their other faculties, they would be able to exhibit all the evidences of mental capacity which, in most of the cases in the article in question that were observed in this country, are relied upon as proofs of unimpaired mind.

We need no more convincing evidence that an undue estimate of mental power has been placed upon the expression of the face, and the pantomimic gestures, in the cases accompanied by loss of speech detailed in the article under notice, than the fact that the author arrives at the following very strange conclusion : "It would seem as if the absence of speech in similar instances must be looked upon as *prima facie* evidence of clearness of understanding !"

As no one will attempt to deny that there are apparently perfect recoveries from all the effects of apoplexy, so all must acknowledge that there are divers degrees of mental as well as of physical lesion, where those effects are permanent. Each case must be judged upon its own facts. Mind repressed by corporeal impediments struggles for release, and eagerly seizes upon every available means of expression. So far as it is expressed, clearly, definitely, and unmistakably, so far it may be accepted and judged ; but if its manifestations exhibit but one measure of capacity, we have no right thence to attribute to it a twofold or a threefold measure. In a few of the cases included in the article under notice, the patient gave unequivocal proofs of restoration to a large amount of mental ability ; Henry Parish, so far as is proven, exhibited no positive evidence of an intellect superior to a low grade of dementia.

* A remarkable case in point is related in the American Journal of Insanity, vol. iv., p 163.

As in the former examples, so in the latter case, the mental power must be judged of according to the evidence in each instance respectively.

There is nothing in the article in question which changes or in any way modifies my views, as expressed in the foregoing opinion.

P. E.

October 22d, 1857.